

# Advisory Opinion 19-001

January 2, 2019; City of Victoria

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This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2018). It is based on the facts and information available to the Commissioner as described below.

## Facts and Procedural History:

On December 4, 2018, the Data Practices Office received an advisory opinion request from Robert J. V. Vose, City Attorney for the City of Victoria (City). In his letter, Mr. Vose asked the Commissioner to issue an advisory opinion regarding the City's response to a data request pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (Data Practices Act).

The City provided the following information to the Commissioner. The City received a data request on November 7, 2018 for:

*[C]ertain data or information related to a Facebook page established by Victoria Mayor Thomas Funk known as "Victoria Residents First." On November 9, 2019, the City's responsible authority e-mailed a Department of Administration official seeking advice regarding this request. The Department's response, enclosed, was that the Facebook page and its contents are not "government data" and thus the City is not required to provide responsive data. The City replied to [the data requester] in accordance with this informal advice.*

...

*The Mayor uses "Victoria Residents First" to post his personal views on various issues, some of which have been, or might be, considered by the City Council. In turn, people sometimes reply to the Mayor's posts and this periodically results in further discussion or debate on the Facebook page. [Footnote omitted.]*

The City further noted that it does not have any social media policies that apply to its elected officials, who do not maintain regular hours and are compensated by City ordinance. The City wrote:

*The Mayor and council members are expected to attend council meetings and other official City meetings, and to take whatever time is needed in advance of such meetings to be familiar with the agenda and supporting materials. They may also periodically participate in other events on behalf of the City.*

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## Issue:

Based on the opinion request, the Commissioner agreed to address the following issue:

Did the City of Victoria respond appropriately to a data request for information from the Facebook page "Victoria Residents First," pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13?

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## Discussion:

Government data are defined as, "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." (See Minnesota Statutes, section 13.02, subdivision 7.) Government data are public unless classified by statute, temporary classification, or federal law. (See Minnesota Statutes, section 13.03, subdivision 1.)

In arguing that the information on the Facebook page does not constitute government data, the City wrote:

*The Department [of Administration] broadly construes the term "government data." In Advisory Opinion Nos. [95-013](#), [08-028](#), and [12-019](#), the Department concluded that data such as audio recordings, e-mail, and text messages may be "government data" even if collected, sent or received by a public official on a personal device that is not owned or provided by the*

governmental unit. However, it appears that only Advisory Opinion No. 18-005 addresses a request for, among other data, "social media communications." That opinion does not resolve whether posts and other activities on social media such as Facebook, conducted by an individual governmental official without the governmental unit's authorization or involvement, constitute "government data."

...

We agree with the Department's informal advice that "Victoria Residents First" Facebook page does not constitute "government data" because the data associated with this Facebook page was not collected, created, received, maintained or disseminated by the City of Victoria. The City did not create the Facebook page and the City Council has not authorized or approved Mayor Funk's establishment of such page or his participation on the page as the Mayor. Neither state law nor City of Victoria policies require the mayor or council members to participate in social media such as Facebook.

While the Mayor may certainly use social media to interact with his constituents, either as a candidate or as an elected individual, doing so does not make the information posted on those sites "government data." According to the City, the information on the Facebook page was not created in the course of the Mayor's City-sanctioned responsibilities and did not represent the City's official position on issues. As such, the City did not collect, create, receive, maintain, or disseminate the information as a government entity. Consequently, the Facebook information does not meet the definition of "government data" and the City is not required to collect and provide access to it.

The Commissioner also notes that while members of a public body, like the Mayor, are allowed to use social media (see Minnesota Statutes, section 13D.065), they must still be cognizant of the requirements of the Open Meeting Law, Minnesota Statutes, Chapter 13D (OML). The Supreme Court has defined a "meeting" as a gathering of a quorum or more of public officials, where they, "discuss, decide, or receive information as a group on issues relating to the official business of that governing body." *Moberg v. Independent School District No. 281*, 336 N.W.2d 510, 518 (Minn. 1983). Therefore, public body members should refrain from engaging in discussions over social media that include a quorum or more of the public body members.

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## Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issue is as follows:

The City of Victoria responded appropriately to a data request for information from the Facebook page "Victoria Residents First," pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, because the requested information is not government data.

Signed:

Matthew Massman  
Commissioner

January 2, 2019

Permalink: <http://mn.gov/admin/data-practices/opinions/library/index.jsp?id=36-363622>